

RESOLUTION NO. 10-69

RESOLUTION OF THE MAYOR AND THE CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA AWARDING A LICENSE FOR THE BALANCE OF THREE YEARS THROUGH MARCH 31, 2013 TO MIDTOWN TOWING OF MIAMI, INC. SUBJECT TO ANNUAL COMPLIANCE REVIEW TO PERFORM POLICE-INITIATED AND CITY-INITIATED TOWING SERVICES; DIRECTING THE LAW DEPARTMENT TO DRAFT AND NEGOTIATE THE LICENSE AGREEMENT; AND AUTHORIZING THE MAYOR AND THE CITY CLERK, ON BEHALF OF THE CITY TO EXECUTE SUCH AGREEMENT IN FURTHERANCE THEREOF.

WHEREAS, pursuant to Hialeah, Fla., Resolution 10-28 (Mar. 10, 2010), the City of Hialeah awarded Request for Proposal 2009-2010-1000-36-004 to Magic Towing & Recovery, Inc. and further suggested that another request for proposal be issued in order to obtain additional wrecker companies to serve the City; and

WHEREAS, on June 17, 2010, the Selection Committee, comprising of the Director of Construction and Maintenance Department, the Purchasing Director and the Director of Grants and Human Services, ranked the only qualified proposer, Midtown Towing of Miami, Inc., that responded to the Request for Proposal 2009/10-1000-36-010 Police or City-Initiated Wrecker Services, with a average 99.3% score out of a possible 100 points, and

WHEREAS, the Selection Committee recommends that the City Council award Request for Proposal 2009/10-1000-36-010 to Midtown Towing of Miami, Inc. as the second company to be added to the rotation; and

WHEREAS, the recommendation of the Selection Committee was submitted, without additional comment from the Mayor, to the Hialeah City Council; and

WHEREAS, the City of Hialeah finds that it is in the best interest of the City and its general welfare to award a license to Midtown Towing of Miami, Inc.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND THE CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA, THAT:

Section 1: The foregoing facts and recitations contained in the preamble to this resolution are hereby adopted and incorporated by reference as if fully set forth herein.

Section 2: The City of Hialeah, Florida hereby awards a license for the balance of three years through March 31, 2013 to Midtown Towing of Miami, Inc. to perform police or City-initiated towing services, subject to annual compliance review, as the second company to be placed on rotation for such services.

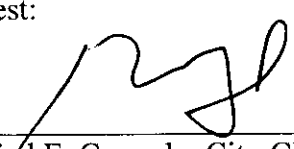
Section 4: The City of Hialeah, Florida hereby directs the Law Department to draft and negotiate the license agreement and further authorizes the Mayor and the City Clerk, on behalf of the City, to execute such agreement in furtherance thereof.

PASSED AND ADOPTED this 22nd day of June, 2010.



Carlos Hernandez
Council President

Attest:



Rafael E. Granado, City Clerk

Approved on this 27 day of June, 2010.



Mayor Julio Robaina

Approved as to form and legal sufficiency:



William M. Grodnick, City Attorney

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Resolution was adopted by a unanimous vote with Councilmembers, Caragol, Casals-Muñoz, Cue, Garcia-Martinez, Gonzalez, Hernandez, and Yedra voting "Yes."

**LICENSE AGREEMENT BETWEEN THE CITY OF HIALEAH
AND MIDTOWN TOWING OF MIAMI, INC.**

This License Agreement entered into this 25 day of June, 2010, by and between the City of Hialeah, a municipal corporation organized and existing under and by virtue of the laws of the State of Florida ("City"), 501 Palm Avenue, Hialeah, Florida 33010 and Midtown Towing of Miami, Inc. or "Licensee", a Florida corporation, having its principal place of business at 551 NW 72 Street, Miami, Florida 33150 and having its Hialeah office at 1759 Palm Avenue, Hialeah, Florida 33010.

WHEREAS, on June 17, 2010, the Selection Committee ranked all the qualified proposers that responded to the Request for Proposal 2009/10-1000-36-010 and the recommendation was submitted, without comment from the Mayor, to the Hialeah City Council; and

WHEREAS, pursuant to Hialeah, Fla., Resolution 10-69 (Jun. 24, 2010), the City of Hialeah awarded the balance of a three-year nonexclusive license through the date of March 31, 2013 to Midtown Towing of Miami, Inc. to perform police or city-initiated towing services and further authorized the Mayor and the City Clerk to enter into an agreement with the prospective licensee; and

WHEREAS, the City agrees to enter into this Agreement with the Wrecker Company and the Wrecker Company agrees to perform services under the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants and obligations herein contained and intending to be legally bound thereby, and subject to the terms and conditions hereinafter stated, the City and the Licensee enter into this License Agreement and agree as follows:

I. DURATION OF LICENSE

Subject to all the terms and conditions contained in this License Agreement, and compliance with all applicable state, federal and local law, and in particular, Chapter 90, Article III, of the Hialeah Code, the City hereby grants Licensee permission to provided police or city-initiated tow truck services and storage of towed or impounded motor vehicles and other related activities as provided in the Scope of Services for a balance of three years, commencing on or about the effective date and ending on March 31, 2013, for a continuous basis or for a rotation basis to be determined later by the City if a rotation is established with another or other companies, within its sole discretion.

II. SCOPE OF SERVICES

The services to be performed by the Wrecker Company are contained in the

Request to Proposal, and the Response to the Request for Proposal submitted by the Wrecker Company and as provided in Chapter 90, Article III, of the Hialeah Code subject to the established maximum towing rates and charges as provided in Hialeah, Fla., Resolution 07-06 (Jan. 25, 2007), a copy of which is incorporated herein and made a part hereof as "Exhibit A". Exhibit A that is incorporated herein by reference shall be considered part of the Contract documents. Due to cumbersome nature of the Request for Proposal and the Response to the Request for Proposal, the City will not attached these documents to this Agreement but as Contract documents will be on file in the City Clerk's Office. In the event of a conflict between the incorporated documents and this Agreement, the terms of this Agreement shall prevail. The Wrecker Company agrees to invoice the City bi-weekly for services rendered and immediately notify the Law Department and the Police Department on forfeiture holds and to submit to random audits of equipment to be performed by the City. The Wrecker Company agrees to provide three junked motor vehicles to the Fire Department for training purposes annually.

II. LICENSING FEE AND COMPENSATION

The Wrecker Company shall pay an annual business tax receipt of \$800.00 for police and city-initiated towing services, plus \$100.00 business tax receipt for each vehicle, as provided by the Hialeah Code § 86-45, as amended from time to time. The maximum rates to be charged by the Wrecker Company are as established in Hialeah, Fla., Resolution 07-06 (Jan. 25, 2007) and Hialeah Code § 90-178(ee).

IV. COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAWS

The parties shall comply with all applicable laws, ordinances, codes, rules and regulations of federal, state and local governments, including the City, and in particular, Chapter 90, Article III, of the Hialeah Code.

V. GENERAL CONDITIONS

All notices or other communications which shall or may be given pursuant to this Agreement shall be in writing and shall be delivered by personal service, or by registered mail addressed to the other party at the address indicated herein or as the same may be changed from time to time. Such notice shall be deemed given on the day on which personally served; or if by mail, on the fifth day after being posted or the date of actual receipt, whichever is earlier.

CITY

John T. Travers, Director
Community Development
City of Hialeah
501 Palm Avenue (P. O. Box 11-0040)
Hialeah, Florida 33011-0040
Telephone: (305) 883-5911

MIDTOWN TOWING OF MIAMI, INC.

Lauraine Lichtman
President
Midtown Towing of Miami, Inc.
551 N.W. 72 Street
Miami, Florida 33150
(305) 754-1450

FAX: (305) 883-5990

(305) 758-4070

VII. NONDELEGABLE

The duties and obligations undertaken by the Wrecker Company pursuant to this Agreement shall not be delegated or assigned to any person or firm. Any sale, transfer, assignment or other disposition of any license or duties and obligations undertaken hereunder shall be approved by the Hialeah City Council and the Mayor, by resolution, prior to continuation of any duties and obligations provided under this License Agreement.

VIII. AWARD OF AGREEMENT

The Wrecker Company warrants that it has not employed or retained any person employed by the City to solicit or secure this Agreement and that it has not offered to pay, paid, or agreed to pay any person employed by the City any fee, commission, percentage, brokerage fee, or gift of any kind contingent upon or resulting from the award of this Agreement.

XIX. CONSTRUCTION OF AGREEMENT

This Agreement shall be construed and enforced according to the laws of the State of Florida. Venue for any litigation, which may arise in connection with this Agreement, shall be in Miami-Dade County, Florida. The Wrecker Company agrees to be subject to the jurisdiction (subject matter and in personam) of the courts in Miami-Dade County, Florida and amenable to process.

X. SUCCESSORS AND ASSIGNS

This Agreement shall be binding upon the parties herein, their heirs, executors, legal representatives, successors and assigns.

XI. INDEMNIFICATION

The Wrecker Company shall indemnify and save the City, its officials, employees, agents, representatives and attorneys, from and against any and all claims, liabilities, losses and causes of action which arise out of or in connection with Wrecker Company's activities under this Agreement, including all other acts or omissions to act on the part of the Wrecker Company or any person acting for or on its behalf, and from and against any orders, judgments, or decrees which may be entered and from and against all costs, attorney's fees, expenses incurred at the trial, appellate or administrative level or proceedings and liabilities insured in the defense of any such claims or in the investigation thereof.

XI. AUDIT

The City reserves the right to audit documents and financial records of the Wrecker Company relating to compliance with this Agreement upon reasonable notice during the performance of this Agreement and for a period of one year after the expiration or termination of this Agreement. If any litigation, claim, negotiations, audit or other action involving the records has commenced, the records must be retained until completion of the action and resolution of all issues. The City will also conduct annual compliance reviews as authorized by the Hialeah Code.

XII. CONFLICT OF INTEREST

A. The Wrecker Company covenants that no person under its employ who presently exercises any functions or responsibilities on behalf of the City in connection with this Agreement has any personal financial interests, direct or indirect, with the Wrecker Company. The Wrecker Company further covenants that, in the performance of the Agreement, no person having such conflicting interest shall be employed. Any such interest on the part of the Wrecker Company or its employees must be disclosed in writing to the City.

B. The Wrecker Company is aware of the conflict of interest laws of the City, Hialeah Code, ch, 26, Art. I and II, Miami-Dade County, Florida, Miami-Dade County Code Miami-Dade County Code § 2-11.1, and the State of Florida, Chapter 112, Part III, Florida Statutes and agrees that it shall fully comply in all respects with the terms of said laws.

XIII. INDEPENDENT CONTRACTOR

The Wrecker Company, its employees, agents or representatives, shall be deemed to be independent contractors and not agents or employees of the City and shall not attain any rights or benefits under the civil service or pension ordinances of the City, or any rights generally afforded classified or unclassified employees. The Wrecker Company, its employees, agents or representatives, shall not be entitled to Florida Workers' Compensation benefits as an employee of the City.

XIV. INSURANCE

A. The Wrecker Company shall provide, pay for and maintain in force at all times during the services to be performed, such insurance, including Workers' Compensation Insurance, Public Liability and Property Damage Insurance, Comprehensive General Liability Insurance, Garage Liability Insurance and Automobile Insurance.

B. Such policy or policies shall be issued by United States Treasury-approved companies authorized to do business in the State of Florida, and having agents upon whom service of process may be made in the State of Florida. Consultant shall specifically protect City by naming City as additional insured under the Comprehensive General Liability Insurance Policy, Garage Liability Insurance and Public Liability and

Property Damage Insurance.

C. All policies shall provide a notice of cancellation or restriction: The policy or policies must be endorsed to provide City with 30 days notice of cancellation and/or restriction.

1. Worker's Compensation Insurance to apply for all employees in compliance with the state worker's compensation law and all applicable federal law.

2. Public Liability and Property Damage Insurance in the amount of \$500,000 and an Excess Liability Comprehensive General Liability Insurance with minimum limits of \$1,000,000 per occurrence combined single limit for Bodily Injury Liability and Property Damage Liability. Coverage must be afforded on a form no more restrictive than the latest edition of the Comprehensive General Liability Policy, without restrictive endorsements, as filed by the Insurance Services Office, and must include: (1) Premises and/or Operations; (2) Independent Contractors; and (3) Personal Injury Coverage with Employee and Contractual Exclusions removed with minimum limits of coverage equal to those required for Bodily Injury Liability and Property Damage Liability.

3. Garage Liability Insurance in an amount not less than \$100,000 per occurrence for bodily insurance and property damage combined, endorsed to include:

(a) Automobile service operations.

(b) Garage keeper's legal liability covering perils of fire and explosion, theft of an entire vehicle, riot and civil commotion, vandalism and malicious mischief.

4. Business Automobile Liability Insurance with minimum liability limits of \$500,000 per occurrence combined single limit for Bodily Injury Liability and Property Damage Liability. Coverage must be afforded on a form no more restrictive than the latest edition of the Business Automobile Liability Policy, without restrictive endorsements, as filed by the Insurance Services Office and must include (1) Owned vehicles; and (2) Hired and non-owned vehicles. The Risk Manager may waive this provision, if appropriate.

5. The Wrecker Company shall provide City with a Certificate of Insurance or a copy of all insurance policies required in this article. City reserves the right to require a certified copy of such policies upon request. All endorsements and certificates shall state that City shall be given 30 days notice prior to expiration or cancellation of the policy.

6. Failure to maintain the insurance required above shall be just grounds for suspension or termination of this Agreement.

D. The Wrecker Company agrees that the insurance coverage required shall include those classifications as are listed in standard liability insurance manuals, which most nearly reflect the operations of the Wrecker Company.

E. All insurance policies required above shall be issued by companies authorized to be business under the laws of the State of Florida. The company must be rated no less than "A" as to management, and not less than Class "X" as to financial strength by the latest edition of Best's Insurance Guide, published by A.M. Best Company, Oldwick, New Jersey, or its equivalent, subject to the approval of the City's Risk Manager, or companies holding a valid Florida certificate of authority as shown in the latest "List of All Insurance companies Authorized or Approved to do Business in Florida," issued by the State of Florida Guaranty Fund.

XV. CANCELLATION WITHOUT CAUSE

The City retains the right to cancel this Agreement upon 30 days written notice prior to the completion of the license term required pursuant to paragraph II hereof without penalty to the City. In that event, notice of cancellation of this Agreement shall be in writing to the City who shall be provided a refund of the balance of any paid annual license fee for the uncompleted term, prorated from the date of cancellation.

It is hereby understood that any payment made to the Wrecker Company in accordance with this section shall be made only if the Wrecker Company is not in default under the terms of this Agreement. If Wrecker Company is in default, then the City shall in no way be obligated to pay and shall not pay the Wrecker Company any sum.

XVI. NONDISCRIMINATION

The Wrecker Company agrees that it shall no discriminate as to race, color, creed, national origin, religion, age or disability in connection with its performance hereunder.

XVII. DEFAULT

A. Insolvency/Bankruptcy. Subject to paragraph C herein, Licensee shall be in default if during the terms of this Agreement,

1. Licensee:
 - a. files a voluntary petition in bankruptcy;
 - b. is adjudicated insolvent;
 - c. obtains an order for relief under Section 301 of the Bankruptcy Code (11 U.S.C. § 301);
 - d. files any petition or fails to contest any petition filed against it

seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief for itself under any laws relating to bankruptcy, insolvency or other relief for debtors;

e. seeks or consents to or acquiesces in the appointment of any trustee, receiver, master, custodian or liquidator of Licensee, or any of Licensee's property and/or License and/or any and all of the revenues, issues, earnings, profits or income thereof;

f. makes an assignment for the benefit of creditors;

g. fails to pay Licensee's debts generally as they become due;

h. conceals, removes or permits to be concealed or removed, any part of Licensee's property, with intent to hinder, delay or defraud Licensee's creditors or any of them, or makes or suffers a transfer of any of Licensee's property which may constitute an illegal preference or be considered an insider transaction, as defined in the Bankruptcy Code, or which may be fraudulent under any bankruptcy, fraudulent conveyance or similar law; or shall have suffered or permitted, while insolvent, any creditor to obtain a lien upon any of Licensee's property through legal proceedings which is not vacated within 30 days from the date thereof; or

2. A petition is filed in a court of competent jurisdiction against Licensee seeking any determination of bankruptcy, reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future Federal or State statute, law or regulation relating to bankruptcy, insolvency or other relief for debtors, which petition is not vacated or dismissed within an aggregate of 90 days (whether or not consecutive) from the date of the filing thereof; or

3. Any trustee, receiver, custodian or liquidator of Licensee, or of any of the property of Licensee and/or of all or any part of this License and/or of any or all of the revenues, issues, earnings, profits or income therefrom, is appointed without the prior written consent of the City, which appointment shall remain unvacated and unstayed for an aggregate of 90 days (whether or not consecutive) from the date of the appointment; then upon the occurrence of any such events an Uncured Event of Default shall have occurred hereunder and the City may exercise any and all remedies available to it; or

4. Licensee fails to perform or observe any term, covenant, agreement or condition of this Agreement, on the part of Licensee to be performed within 30 days after prompt written notice thereof from the City, unless such performance shall reasonably require a longer period, in which case Licensee shall not be deemed in default if Licensee commences the required performance promptly and thereafter pursues and diligently completes such action.

B. The City may terminate this Agreement for cause and cause shall include those events of default as provided in paragraph A above.

C. Notice and Cure. Neither party shall be in default under this Agreement or in breach of any provision hereof unless and until the other party shall have given such party written notice of such default and the defaulting party shall have failed to cure the default within 30 days after receipt of such notice: provided, however, that where such default cannot reasonably be cured within such 30-day period, if the defaulting party shall proceed promptly to cure the same and prosecute such cure with due diligence, the time for curing such default shall be extended for such period of time as may be necessary under the circumstances.

XVIII. ENTIRE AGREEMENT

This Agreement and its attachments and exhibits constitute the sole and only agreement of the parties and accurately sets forth the rights, duties, and obligations of each to the other. Any prior agreements, promises, negotiations, or representations not expressly set forth in this Agreement are of no force and effect.

XIX. AMENDMENT

No amendments to this Agreement shall be binding on either party unless in writing and signed by both parties.

XX. MISCELLANEOUS

A. Captions, title and paragraph headings are for convenient reference and are not a part of this Agreement. Such captions, title or paragraph headings shall not be deemed in any manner to modify, explain, enlarge or restrict any of the provisions contained in this Agreement.

B. In the event of conflict between the terms of this Agreement and any terms or conditions in any attached document; the terms in this Agreement shall prevail.

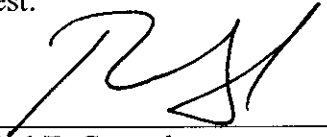
C. No waiver or breach of any provision of this Agreement shall constitute a waiver of any subsequent breach of the same or any other provision hereof, and no waiver shall be effective unless made in writing.

D. Should any provisions, paragraph, sentence, work or phrase contained in this Agreement be determined by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable under the laws of the State of Florida or the City of Hialeah, such provisions, paragraphs, sentences, words or phrases shall be deemed modified to the extent necessary in order to conform with such laws, or if not modifiable to conform with such laws, then same shall be deemed severable, and in either event, the remaining terms and provisions of this Agreement shall remain unmodified and in full force and effect.

E. Further Assurances. All parties hereto upon the request of any other party shall execute such further instruments or documents as may be reasonably required by the requesting party to implement the terms, conditions and provisions of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed by the respective officials thereunto duly authorized, this the day and year first above written.

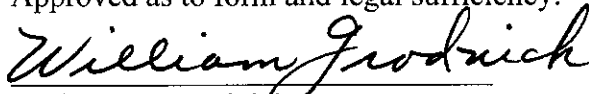
Attest:



Rafael E. Granado
City Clerk

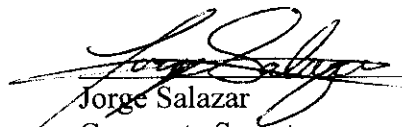
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Approved as to form and legal sufficiency:



William M. Grodnick
City Attorney

Attest:

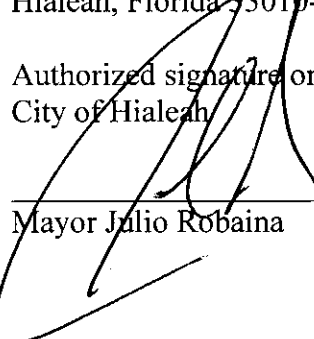


Jorge Salazar
Corporate Secretary

(SEAL)

City of Hialeah, Florida
501 Palm Avenue
Hialeah, Florida 33010-0040

Authorized signature on behalf of
City of Hialeah

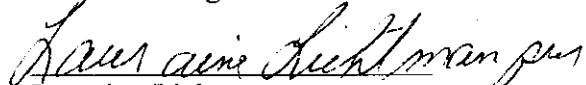


Mayor Julio Robaina

6/25/10
Date

Midtown Towing of Miami, Inc.
a Florida Corporation
551 N.W. 72 Street
Miami, Florida 33150

Authorized signature of the firm:



Lauraine Lichtman
President